Office-Supreme Court, U.S.
FILED
JUN 18 1985
ALEXANDER L. STEVAS,
CLERK

84-1964

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1984

* *

MANCE JUNIOR TERRY,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

* *

PETITION FOR A WRIT OF
CERTIORARI TO THE COURT
OF CRIMINAL APPEALS OF ALABAMA

* *

BRIEF OF PETITIONER

* *

RONDA H. LACEY
LACEY & SIMONETTI
1800 South 12th Avenue
Birmingham, Alabama 35205
(205) 930-9888

ATTORNEY FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether the search of a residence by police officers without consent; without warrant; and without exigent circumstances is legal.

2. Whether an accused can be convicted of Violation of the Alabama Uniform Controlled Substances Act, without proof of ownership and/or knowledge of contraband.

PARTIES

In the Circuit Court for Jefferson County, Alabama, Bessemer Division, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: The State of Alabama, who is the Respondent herein and Mance Junior Terry, who is the Petitioner herein.

The matters at issue here were first raised in the Circuit Court for Jefferson County, Alabama, Bessemer Division, and have been at issue throughout these proceedings.

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OPINIONS BELOW

The opinions of the Court of Criminal Appeals of Alabama affirming Petitioner's conviction has not as yet been reported, but will be reported as follows:

Terry v. State, _____ So. 2d _____ (Cr.App.Ala. 1984)

A copy of the opinions are submitted in Appendix "A" to this petition.

The order of the Alabama Supreme Court denying Petitioner's writ of certiorari has not as yet been reported, but will be reported as follows:

Ex Parte: Mance Junior Terry
In re: Terry v. State, _____
So.2d _____ (S.Ct.Ala., 1984)

A copy of the same is submitted in Appendix "B" to this petition.

JURISDICTION

The order of the Supreme Court of Alabama wherein the writ of certiorari was denied was issued on April 19, 1985, and this petition is filed within sixty (60) days of that date.

The Jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved in Petitioner's write include the Fourth Amendment to the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States. A copy of these amendments are submitted as Appendix "C" to this petition.

STATEMENT OF CASE AND FACTS

I

Petitioner was tried on a charge of Violation of the Alabama Uniform Controlled Substances Act and convicted. An appeal followed to the Alabama Court of Criminal Appeals.

Petitioner raised two issues on appeal: Whether the search of a residence by police officers without consent and without warrant is legal and whether an accused can be convicted on Violation of the Alabama Uniform Controlled Substances Act, without proof of ownership and/or knowledge of contraband.

On January 8, 1985, the Court of Criminal Appeals in its first opinion affirmed the conviction of the Circuit Court, the copy of which is submitted as Appendix "A-1".

Subsequent to your Petitioner's application for rehearing and motion pursuant to Rule 39(k) of the Alabama Rules of Criminal Procedures, a second opinion dated February 12, 1985, was issued and is submitted as Appendix "A-2".

Your Petitioner then requested a petition of writ of certiorari to the Court of Criminal Appeals of Alabama alleging substantially the same issues as have been raised here. The same was denied on April 19, 1985.

II

The petition is based on the following facts:

Petitioner resided in the residence located at 486 Carriage Hills Drive, Bessemer, Alabama, which was owned by his brother, Dwight Dwayne Terry. Petitioner resided

there with his wife.

Testimony was presented that other individuals also had access to the residence. On the day in question, a neighbor phoned and reported that two black males were entering the residence. Upon the arrival of police officers to the scene, two black males meeting the description phoned in were seen traveling in a direction away from the residence. The officers then, hearing no sounds or noises to indicate anyone was still in the home, then proceeded to search the residence of your Petitioner. Contraband was subsequently found in a chest in a "spare" bedroom in the premises.

Petitioner was arrested upon his arrival to the residence and charged with Violation of the Alabama Uniform Controlled Substances Act.

The two black males were arrested and charged with Violation of the Alabama Uniform Controlled Substances Act but were not charged with burglary, even though they had merchandise that was identified as belonging to your Petitioner.

ARGUMENT

I

Petitioner presents a very difficult question for this Court: Whether a search by police officers, without consent, without warrant, and without exigent circumstances, violate an individual's rights under the Fourth Amendment of the United States Constitution, where the search was subsequent to a report of a suspected burglary of a residence; subsequent to a report that the only two known suspects were an another location; without knowledge of what, if anything, could have been missing from the residence; within daylight hours such that a warrant could have been obtained; and further with no exigent circumstances surrounding the residence in question.

Petitioner submits that the testimony at trial was undisputed that the police officers had received a call of a suspected burglary of a residence on Carriage Hills Drive, also, that one of the officers had seen two black males meeting the description of the only two reported suspects several blocks away from the residence. Prior to the officers' entrance into the residence, there were no sounds or noises that would depict or indicate that individuals were inside the home. No identifying statements were given by police officers prior to the entrance and neither officer requested a warrant.

Petitioner submits that the search and subsequent seizure of contraband by the officers was illegal and in violation of the Fourth

Amendment requirement of a search warrant. That the search herein does not fall within the new good faith exception to the requirement of a warrant as recently handed down by this Court in United States v. Leon, et al, No. 82-1771, July 5, 1984. Petitioner submits that this Court in Michigan v. Clifford, _____ U.S. _____, 78 L.Ed.2d 477, 104 S.Ct. _____, January 11, 1984, held that a warrantless and nonconsentual search of a fire damaged house, violated the homeowner's Fourth Amendment rights. That where a legitimate privacy interest exists, the exigent circumstances do not justify the search.

Petitioner submits that the report of a suspected burglary does not remove an individual's right and

expectation of privacy. That Petitioner, more so than an individual owning a fire damaged home, retained a reasonable privacy interest in a residence. The sheer fact that a possible burglary was reported does not provide exigent circumstances, in light of the fact that the only two reported suspects were seen traveling in a direction away from the home that would waive the requirement of a search warrant. U.S. v. Kinney, 638 F.2d 941 (1981) held that noises coming from an occupied dwelling did not constitute a physical threat where the arrest was outside the residence. The Court in Kinney also pointed out that there were no cars in the area and no sounds within the building indicating that there was no possible way for an individual to

escape.

The statement by the officers in rebuttal that they were looking for suspects is not consistent with their actions, as no precautionary measures were taken to protect themselves from any suspected burglars or felons.

The other argument by the State, that the contraband was in plain view is without merit. An illegal entry cannot be made and then rely on the plain view doctrine. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

Petitioner submits that the entry into the residence was illegal, the same was in violation of his constitutional expectation of privacy, and was not within any known exception to the requirement for a search

warrant.

II

Petitioner further submits that upon the failure of the State of Alabama to prove ownership of the residence in contraband, insufficient evidence was submitted and therefore no conviction should result.

The testimony at trial was undisputed that Appellant did not own the residence where the contraband was seized. Appellant was residing at the residence along with his wife and other individuals had access and regularly came to and from the residence in question.

Cason v. State, 435 So.2d 200 (1983), held that the presence of an accused in an automobile, where controlled substances were found is not sufficient in and of itself to

establish constructive possession or knowledge of presence of the substance. Here, the fact that Petitioner resided in the residence is not enough in and of itself to establish constructive possession or knowledge of any contraband.

The State of Alabama made no attempt to ascertain who owned or controlled the residence in question and specifically the room or bedroom in question where the contraband was seized. In Crane v. State, 401 So.2d 148, writ denied 401 So.2d 151 (1981), the Court held that a Defendant could not have been in constructive possession as required to establish culpability, where the Defendant was not shown to have owned or controlled the apartment where contraband was

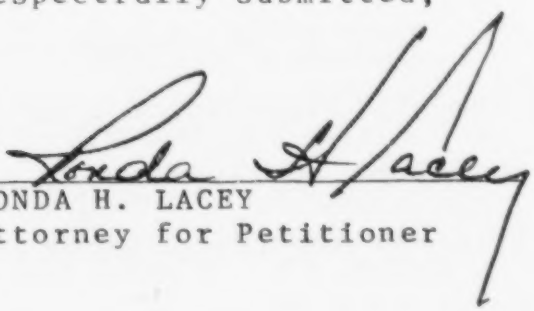
found; and where no attempt was made by searching officers to ascertain the name of the person in whose bedroom the marijuana was found or to ascertain the name of the persons to whom items in the bedroom belonged.

The requirement is, that knowledge of the presence of contraband must be shown beyond a reasonable doubt, and this has not been done by the State of Alabama in this case. Jones v. State, 432 So.2d 5 (1983).

CONCLUSION

Petitioner, Mance Junior Terry, respectfully submits that the decisions of the Alabama Court of Criminal Appeals and the Supreme Court of Alabama in his case presents conflict with prior decisions and opinions of this Honorable Court on numerous different points of constitutional law. Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decisions of the Courts of Alabama and on such review will reverse the decision of the Alabama Court and hold that the State of Alabama violated Petitioner's constitutional rights under the Fourth and Fourteenth Amendments of the United States Constitution.

Respectfully submitted,

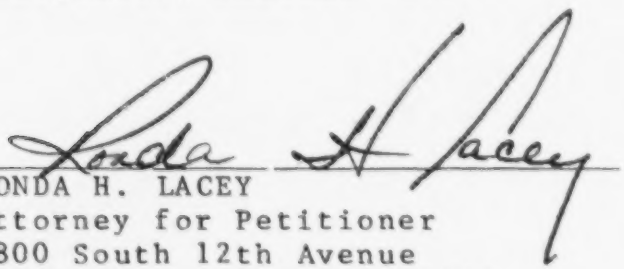


RONDA H. LACEY
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari has been mailed to the attorneys for the Respondent, this the _____ day of June _____, 1985, and addressed as follows:

Honorable Charles Graddick
Attorney General
250 Administrative Building
Montgomery, Alabama 36130



RONDA H. LACEY
Attorney for Petitioner
1800 South 12th Avenue
Birmingham, Alabama 35205
Telephone: 205-930-9888